

BRYAN CAVE LLP  
1900 MAIN STREET, SUITE 700  
IRVINE, CALIFORNIA 92614-7328

1 ROBERT E. BOONE III (California Bar No. 132780)

**BRYAN CAVE LLP**

2 120 Broadway, Suite 300  
Santa Monica, CA 90401-2386

3 Telephone: (310) 576-2100

4 Facsimile: (310) 576-2200

Email: [reboone@bryancave.com](mailto:reboone@bryancave.com)

5 STACEY L. HERTER (California Bar No. 185366)

**BRYAN CAVE LLP**

6 1900 Main Street, Suite 700  
Irvine, California 92614-7328

7 Telephone: (949) 223-7000

8 Facsimile: (949) 223-7100

Email: [Stacey.Herter@bryancave.com](mailto:Stacey.Herter@bryancave.com)

9 Attorneys for Defendant

10 COUNTRYWIDE HOME LOANS, INC., individually  
11 and dba AMERICA'S WHOLESALE LENDER; and  
RECONTRUST COMPANY

12  
13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**  
15

16 ROSARIO TINA, and JESUS G. TINA,

17 Plaintiffs,

18 vs.

19 COUNTRYWIDE HOME LOANS,  
20 INC.; AMERICA'S WHOLESALE  
LENDER; RECONTRUST COMPANY,

21 Defendants.  
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Case No. 08 CV 1233 H AJB

**EX PARTE APPLICATION OF  
DEFENDANTS FOR AN  
EXTENSION OF TIME TO  
RESPOND TO COMPLAINT;  
SUPPORTING MEMORANDUM OF  
POINTS AND AUTHORITIES; AND  
DECLARATION OF STACEY L.  
HERTER**

**[FRCP 6(b) and Local Rule 12.1]**

**[Filed concurrently with  
Memorandum of Points and  
Authorities, Declaration of Stacey L.  
Herter; and [Proposed] Order]**

1 Defendants COUNTRYWIDE HOME LOANS, INC., individually and dba  
 2 AMERICA'S WHOLESALE LENDER and RECONTRUST COMPANY  
 3 (collectively "Defendants") respectfully apply ex parte to the Court for an Order  
 4 extending the time within which Defendants may respond to the Complaint of  
 5 Plaintiffs ROSARIO TINA, and JESUS G. TINA ("Plaintiffs"). Defendants seek an  
 6 additional thirty (30) days, to and including August 29, 2008.

7 This ex parte application for an extension to respond to the Complaint is  
 8 necessary to allow Defendants sufficient time to investigate the claims asserted and  
 9 to prepare appropriate responsive pleadings. Plaintiffs filed their original complaint  
 10 (Case no. 08-CV-1167 JM (NLS)) on July 1, 2008; the Court dismissed the action  
 11 on July 2, 2008 for lack of subject matter jurisdiction. On July 10, 2008, Plaintiffs  
 12 re-filed their complaint (Case no. 08-CV-01233 H (AJB)). On July 14, 2008, the  
 13 court issued its "report of clerk and order of transfer pursuant to "low-number rule"  
 14 (attached), and the matter was transferred back to Judge Jeffrey T. Miller. Plaintiffs  
 15 filed their Summons/Return of Service filed on July 11, 2008, noting purported  
 16 service on Defendants July 10, 2008. (Docket No. 5.) Defendants only recently  
 17 retained counsel on July 28, 2008 and Defendants' responsive pleadings are  
 18 currently due to be filed on July 30, 2008.

19 Defendants require additional time because (i) counsel for Defendants need a  
 20 reasonable time to consult with their clients, review the relevant transaction files,  
 21 research legal issues relevant to the claims alleged, and prepare a written response to  
 22 the Complaint, all of which cannot be adequately done before the current deadline of  
 23 July 30<sup>th</sup>; and (ii) despite attempts by Defendants to obtain an extension from  
 24 Plaintiffs, acting in pro per, Plaintiffs have failed to respond to those requests.

25 Because Defendants' response is due on July 30, 2008, there is not sufficient  
 26 time to timely serve a noticed motion for an extension of time to respond. This Ex  
 27 Parte Application is made pursuant to Federal Rule of Civil Procedure 6(b) and  
 28 United States District Court, Southern District of California, Local Rule 12.1, on the

1 grounds that good cause exists for the requested extension of time.

2 Counsel requires more than two days to properly investigate, research and  
3 prepare a response to the Complaint. Defendants' request for an additional thirty  
4 days to respond to the Complaint, to and including August 29, 2008, will not  
5 prejudice Plaintiffs. Defendants certify that this is the first extension of time  
6 requested.

7 Plaintiffs have been notified in writing of this Application in advance and  
8 have been served with a copy of the ex parte papers via overnight delivery. (See  
9 Declaration of Stacey L. Herter, ¶ 8, filed concurrently herewith.)

10 This Ex Parte Application is based on this Application, and the supporting  
11 Memorandum of Points and Authorities, the Declaration of Stacey L. Herter, and on  
12 all papers, pleadings and records on file in this action.

13  
14 Dated: July 29, 2008

ROBERT E. BOONE III, ESQ.  
STACEY L. HERTER  
BRYAN CAVE LLP

17 By: /s/ Stacey Herter

18 Stacey L. Herter  
19 Attorneys for Defendant  
20 COUNTRYWIDE HOME LOANS, INC.,  
21 individually and dba AMERICA'S  
22 WHOLESALE LENDER; and  
23 RECONTRUST COMPANY  
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BRYAN CAVE LLP  
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IRVINE, CALIFORNIA 92614-7328

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. PROCEDURAL HISTORY**

Plaintiffs filed their original complaint (Case no. 08-CV-1167 JM (NLS)) on July 1, 2008 (Docket No. 1); the Court dismissed the action on July 2, 2008 for lack of subject matter jurisdiction (Docket No. 2).

On July 10, 2008, Plaintiffs re-filed their complaint (Case no. 08-CV-01233 H (AJB)) (Docket No. 1). On July 14, 2008, the court issued its "report of clerk and order of transfer pursuant to low-number rule," transferring the matter back to Judge Jeffrey T. Miller (Docket No. 6). Plaintiffs filed their Summons/Return of Service filed on July 11, 2008, noting purported service on Defendants on July 10, 2008 (Docket No. 5). Defendants only recently retained counsel on July 28, 2008 and Defendants' responsive pleadings are currently due to be filed on July 30, 2008. (Declaration of Stacey L. Herter ["Herter Decl., ¶¶ 3 & 7.]

Pursuant to Federal Rule of Civil Procedure 81(c)(2), Defendants must file a response to the Complaint on or by July 30, 2008, the longest of "20 days after the receipt through service or otherwise of a copy of the initial pleading...or within 20 days after the service of summons upon such initial pleading..."

**II. DEFENDANTS REQUESTED ADDITIONAL TIME TO RESPOND; PLAINTIFFS IGNORED DEFENDANTS' REQUEST**

Stacey L. Herter, counsel for Defendants, contacted Plaintiffs on July 28, 2008 at two different telephone numbers listed on the pleadings to request an extension of time for all Defendants to file and serve a response to the Complaint. (Herter Decl., ¶ 4.) The individual who answered the first telephone number ((619) 581-7844) responded that counsel had the wrong number and that neither Rosario nor Jesus Tina resided at that number; the second telephone number called ((619) 813-7844) went directly to voicemail. Defendants' counsel left a voicemail requesting an extension to respond to Plaintiffs' complaint. (Herter Decl., ¶ 5.) To date, Plaintiffs have not returned Defendants' counsel's telephone call. (Herter

1 Decl., ¶ 6.)

2 Two days is inadequate to enable Defendants' lawyers to investigate, research  
3 and prepare a response to the Complaint in this action.

4 In particular, on July 11, 2008, Judge Marilyn L. Huff's clerk contacted  
5 Defendants approximately 30 minutes after Defendants had foreclosed on Plaintiffs'  
6 property with a request that Defendants participate in an afternoon telephone  
7 conference with Judge Huff. At that time, Judge Huff ordered that Defendants may  
8 file an opposition to Plaintiffs' ex parte application for injunction by noon on July  
9 15, 2008. (See Docket No. 4) Defendants filed their opposition on July 15, 2008.  
10 (See Docket Nos. 7 & 8.)

11 Defendants apply ex parte to the Court for an Order for an extension of thirty  
12 (30) additional days to file their responsive pleadings, from July 30, 2008 to and  
13 including August 29, 2008.

14 **III. FOR GOOD CAUSE SHOWN, AND IN THE INTEREST OF**  
15 **FAIRNESS, DEFENDANTS' DEADLINE TO RESPOND TO THE**  
16 **COMPLAINT SHOULD BE EXTENDED.**

17 Under Federal Rule of Civil Procedure 6(b), when an "act is required . . . the  
18 court for cause shown may at any time in its discretion (1) with or without motion or  
19 notice order the period enlarged if the request thereof is made before the expiration  
20 of the period originally prescribed..." Fed. R. Civ. P. 6(b); see *Jenkins v.*  
21 *Commonwealth Land Title Ins. Co.*, 95 F.3d 791, 795 (9th Cir. 1996).

22 The extension of time sought is being sought prior to the expiration of the  
23 time for Defendants to file their response. Defendants are not required to file their  
24 response until July 30, 2008.

25 Good cause exists for the requested extension because Defendants only  
26 recently obtained counsel and counsel for Defendants require additional time to  
27 review the complaint, review the case file, conduct applicable research, and prepare  
28 a responsive pleading, all of which will require more than two days due to the nature

1 of this dispute.

2 A court order granting the requested extension of time will prevent unfair  
3 prejudice to Defendants, while imposing no undue burden or prejudice on Plaintiffs.  
4 Therefore, pursuant to Federal Rule 6(b), the Court should enter the proposed order  
5 lodged with this application, which provides that the period in which Defendants  
6 may file their response to the Complaint shall be extended to and including August  
7 29, 2008.

8 **IV. CONCLUSION**

9 For all of the foregoing reasons, Defendants respectfully request that this  
10 Court grant Defendants an extension of the date to respond to the Complaint, up to  
11 and including August 29, 2008.

12 Dated: July 29, 2008

13 ROBERT E. BOONE III, ESQ.  
14 STACEY L. HERTER  
15 **BRYAN CAVE LLP**

16 By: /s/ Stacey Herter

17 Stacey L. Herter  
18 Attorneys for Defendant  
19 COUNTRYWIDE HOME LOANS, INC.,  
20 individually and dba AMERICA'S  
21 WHOLESALE LENDER; and  
22 RECONTRUST COMPANY  
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17 and dba AMERICA'S WHOLESALE LENDER; and  
18 RECONTRUST COMPANY

19 **UNITED STATES DISTRICT COURT**  
20 **SOUTHERN DISTRICT OF CALIFORNIA**

21 ROSARIO TINA, and JESUS G. TINA,

22 Plaintiffs,

23 vs.

24 COUNTRYWIDE HOME LOANS,  
25 INC.; AMERICA'S WHOLESALE  
26 LENDER; RECONTRUST COMPANY,

27 Defendants.

Case No. 08 CV 1233 H AJB

**DECLARATION OF STACEY L.  
HERTER IN SUPPORT OF EX  
PARTE APPLICATION OF  
DEFENDANTS FOR AN  
EXTENSION OF TIME TO  
RESPOND TO COMPLAINT**

**[Filed concurrently with  
Memorandum of Points and  
Authorities and [Proposed] Order]**



**DECLARATION OF STACEY L. HERTER**

I, Stacey L. Herter, hereby declare as follows:

1. I am an attorney duly licensed to practice law in all courts of the State of California. I am counsel with the law firm of Bryan Cave LLP, attorneys of record for COUNTRYWIDE HOME LOANS, INC., individually and dba AMERICA'S WHOLESALE LENDER and RECONTRUST COMPANY (collectively "Defendants") in the action herein. I have personal knowledge of the matters set forth in this declaration. If called as a witness, I could and would testify competently to such matters.

2. Defendants' ex parte application for an extension to respond to the Complaint is necessary to allow Defendants sufficient time to investigate the claims asserted and to prepare appropriate responsive pleadings.

3. Defendants retained my services in connection with this matter on July 28, 2008.

4. On July 28, 2008, I telephoned the two numbers listed on the pleadings to request an extension of time for all Defendants to file and serve a response to the Complaint.

5. The individual who answered the first telephone number ((619) 581-7844) responded that I had the wrong number and that neither Rosario nor Jesus Tina resided at that number; the second telephone number I called ((619) 813-7844) went directly to voicemail. I left a voicemail requesting an extension to respond to Plaintiffs' complaint.

6. To date, Plaintiffs have not returned my telephone call or responded to my request for an extension of time to respond to the complaint.

7. Defendants' responsive pleadings are currently due to be filed on July 30, 2008.

8. Accordingly, on July 29, 2008, I sent correspondence to Plaintiffs via

BRYAN CAVE LLP  
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1 Federal Express (insofar as Plaintiffs do not list an email address for service and  
2 because the telephone numbers provided for Plaintiffs may not be correct) advising  
3 them of this ex parte application and the bases of the application. I enclosed a copy  
4 of the ex parte application with this correspondence. (Attached hereto as Exhibit  
5 “A” is a true and correct copy of said correspondence.)

6 I declare under penalty of perjury under the laws of the State of California  
7 and the United States of America that the foregoing is true and correct.

8 Executed this 29th day of July, 2008, at Irvine, California.

9  
10 /s/ Stacey Herter

Stacey L. Herter

BRYAN CAVE LLP  
1900 MAIN STREET, SUITE 700  
IRVINE, CALIFORNIA 92614-7328



Stacey L. Herter  
Counsel  
Direct: (949) 223-7136  
[stacey.herter@bryancave.com](mailto:stacey.herter@bryancave.com)

July 29, 2008

**VIA FEDERAL EXPRESS**

Mr. & Mrs. Jesus and Rosario Tina  
1220 Manchester Street  
National City, CA 91950

Mr. & Mrs. Jesus and Rosario Tina  
863 Glencoe Drive  
San Diego, CA 92114

Re: Jesus and Rosario Tina v. Countrywide Home Loans, Inc.

Dear Mr. and Mrs. Tina:

This letter constitutes notice that the Defendants Countrywide Home Loans, Inc., Individually and dba America's Wholesale Lender and Recontrust Company (collectively "Defendants") will be filing an *ex parte* application today, July 29, 2008 for an Order extending the time for Defendants to respond to the Complaint in the above matter an additional thirty days, to and including August 29, 2008. Enclosed for your review is a copy of the *ex parte* application being electronically filed today. As you will see, this *ex parte* application is being brought on the grounds that you have failed to return my telephone call requesting an extension and Defendants require more than two days to properly investigate, research and prepare a response to the Complaint.

Please advise whether you will be opposing this application. If you have any questions, please do not hesitate to contact me.

Very truly yours,  
A handwritten signature in black ink, appearing to read "Stacey Herter". The signature is fluid and cursive, with a large, stylized "S" at the beginning.  
Stacey Herter

Enclosure (Ex Parte Application)

**Bryan Cave LLP**  
1900 Main Street  
Suite 700  
Irvine, CA 92614-7328  
Tel (949) 223-7000  
Fax (949) 223-7100  
[www.bryancave.com](http://www.bryancave.com)

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St. Louis

BRYAN CAVE LLP  
1900 MAIN STREET, SUITE 700  
IRVINE, CALIFORNIA 92614-7328

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15 Attorneys for Defendant  
16 COUNTRYWIDE HOME LOANS, INC., individually  
17 and dba AMERICA'S WHOLESALE LENDER; and  
18 RECONTRUST COMPANY

19 **UNITED STATES DISTRICT COURT**  
20 **SOUTHERN DISTRICT OF CALIFORNIA**

21 ROSARIO TINA, and JESUS G. TINA,

22 Plaintiffs,

23 vs.

24 COUNTRYWIDE HOME LOANS,  
25 INC.; AMERICA'S WHOLESALE  
26 LENDER; RECONTRUST COMPANY,

27 Defendants.

Case No. 08 CV 1233 H AJB

CERTIFICATE OF SERVICE

BRYAN CAVE LLP  
1900 MAIN STREET, SUITE 700  
IRVINE, CALIFORNIA 92614-7328

I, Stacey Herter, declare:

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is: 1900 Main Street, Suite 700, Irvine, California 92614-7328, and my email address is: Stacey.herter@bryancave.com.

On July 29, 2008, I caused to be served on the interested parties in said action the within: **EX PARTE APPLICATION OF DEFENDANTS FOR AN EXTENSION OF TIME TO RESPOND TO COMPLAINT; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES; AND DECLARATION OF STACEY L. HERTER; DECLARATION OF STACEY L. HERTER IN SUPPORT OF EX PARTE APPLICATION OF DEFENDANTS FOR AN EXTENSION OF TIME TO RESPOND TO COMPLAINT; AND [PROPOSED] ORDER GRANTING EX PARTE APPLICATION OF DEFENDANTS FOR AN EXTENSION OF TIME TO RESPOND TO COMPLAINT** by placing a true copy thereof in sealed envelope(s) addressed as stated below and causing such envelope(s) to be deposited in the U.S. Mail at Irvine, California.

*See Attached Service List for Service Details*

**[X] BY OVERNIGHT DELIVERY** - Depositing the above document(s) in a box or other facility regularly maintained by FedEx in an envelope or package designated by FedEx with delivery fees paid or provided for.

I declare that I am a member of the bar of this Court.

Executed on July 29, 2008, at Irvine, California.

Stacey Herter

(Type or print name)

/s/ Stacey Herter

(Signature)

**Service List**

*Rosario Tina and Jesus G. Tina v. Countrywide Home Loans, Inc., et al.*  
 USDC Case No.: 08 CV 1233 H AJB

Mr. and Mrs. Jesus and Rosario Tina 1220 Manchester Street National City, CA 91950	<i>In Pro Per</i>
Mr. and Mrs. Jesus and Rosario Tina 863 Glencoe Drive San Diego, CA 92114	<i>In Pro Per</i>

BRYAN CAVE LLP  
 1900 MAIN STREET, SUITE 700  
 IRVINE, CALIFORNIA 92614-7328